

Application No. 10/528,352
Amendment "A" dated April 17, 2008
Reply to Office Action mailed October 15, 2007

RECEIVED
CENTRAL FAX CENTER

APR 17 2008

REMARKS

The present Amendment is in response to the Office Action mailed October 17, 2007. Claims 7-20 are cancelled, claims 1, 3, and 4 are amended, and new claims 21-33 are added. Claims 1-6 and 21-33 are now pending in view of the above amendments.¹

ELECTION/RESTRICTION

The Office Action requested an affirmation to the provisional election made without traverse to prosecute Group I, claims 1-6. Applicant hereby affirms the provisional election. Claims 7-20 are hereby cancelled from consideration without prejudice to the further prosecution of these claims at a later date.

PRIOR ART REJECTIONS

Rejection Under 35 U.S.C. §102(b)

The Office Action rejected claims 1-6 under 35 U.S.C. § 102(b) as being anticipated by U.S. Publication No. 2002/0082679 (*Sirhan*). Applicant respectfully traverse.

In accordance with Applicant's understanding, *Sirhan* teaches a prosthesis that controls the release of a therapeutic agent (e.g., FK506) for use in inhibiting restenosis and hyperplasia after an intravascular procedure (Abstract). *Sirhan* teaches a device that minimizes drug washout and provides minimal hindrance to endothelialization of vessel walls (para 0011), which is accomplished by the drug being imbedded within a polymeric material (para 0030-0033). Also, *Sirhan* teaches a drug elution rate-controlling element that is at least partially degradable and that may be polymeric or metallic; however, no examples of metallic substances that are rate-

¹ Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action. Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

The amendments to the claims and new claims are fully supported by the specification, figures, and claims as originally filed. Thus, Applicant respectfully submits that the amendments to the claims do not introduce new matter and entry thereof is respectfully requested.

Application No. 10/528,352
Amendment "A" dated April 17, 2008
Reply to Office Action mailed October 15, 2007

controlling are provided and only polymeric rate-controlling elements are described (para 0051-0055). Corrosion, which is known to be unfavorable, is also stated as a means for drug elution rate-control (para 0054-0055). *Sirhan* also states that the drug can be attached to the metal or alloy, but only shows the use of a polymer for such attachment to metal or alloy which teaches the skilled artisan that a polymer is required for such attachment (para 0051, 0164, 0176-0179). In fact, *Sirhan* is completely devoid of teaching or suggesting that a drug can be applied to a stent in a manner sufficient for implantation without a polymer or polymer-like material being used to retain the drug on the stent. Additionally, *Sirhan* teaches that a stent surface can be roughened by including 10 nm wide and 5 nm deep grooves on the surface, and then the drug can be loaded into the grooves and then coated by parylene (e.g., polyxylenes) polymer (para 0177). *Sirhan* is completely devoid of teaching how to roughen the stent surface except for forming of such deep grooves. Moreover, *Sirhan* is completely devoid of teaching or suggesting roughening a stent surface by sandblasting.

Applicant respectfully asserts that *Sirhan* does not teach or suggest each and every element of the presently pending claims. More particularly, *Sirhan* does not teach or suggest a stent where "at least a portion of the exterior surface and the interior surface is roughened to a predetermined extent for coating with a drug, wherein the surfaces are roughened by sandblasting," as recited in claim 1. *Sirhan* only teaches the aforementioned grooves to roughen a surface of a stent. Also, *Sirhan* is completely devoid of discussing sandblasting. Thus, *Sirhan* does not teach or suggest each and every element of claim 1.

Since *Sirhan* does not teach each and every element of the presently claimed invention recited in claim 1, the claimed invention is not anticipated by *Sirhan*. Claims 2-6 depend from claim 1, and thereby includes the limitations thereof and are allowable for the same reasons claim 1 is allowable. Applicant respectfully requests withdrawal of the rejection of claims 1-6 under 35 U.S.C. § 102(b).

Rejection Under 35 U.S.C. § 103

The Office Action rejected claims 2-3 under 35 U.S.C. § 103(a) as being unpatentable over *Sirhan* in view of U.S. Patent No. 6,254,631 (*Thompson*). Applicant respectfully traverses because the Office Action has not established a *prima facie* case of obviousness.

In accordance with Applicant's understanding, *Thompson* teaches a stent with enhanced friction which is configured to have a polished, smooth external surface with a rough interior

Application No. 10/528,352
Amendment "A" dated April 17, 2008
Reply to Office Action mailed October 15, 2007

surface (Abstract). The roughened interior surface is accomplished by directing a particulate stream of powder silicon carbide of 50 microns at a pressure of 60 psi onto the stent to produce pits of 3 to 20 microns; however, the exterior surface is taught to not be roughened (column 3 line 45 through column 4 line 25). *Thompson* is completely devoid of teaching or suggesting that it would be beneficial for the exterior surface to be similarly roughened. In fact, *Thompson* only teaches that the external surface should be polished and smooth.

The foregoing discussion of *Sirhan* is applicable to this rejection and is incorporated into this remark by specific reference. It should be noted that *Sirhan* does not teach a specific surface to be roughed with the aforementioned grooves.

Applicant respectfully asserts that the combination of *Sirhan* and *Thompson* does not teach or suggest each and every element of the presently pending claims. More particularly, the combination of *Sirhan* and *Thompson* does not teach or suggest a stent where "at least a portion of the exterior surface and the interior surface is roughened to a predetermined extent for coating with a drug, wherein the surfaces are roughened by sandblasting," as recited in claim 1. The combination of *Sirhan* and *Thompson* actually teaches that the exterior surface should not be roughened, and thereby does not teach or suggest each and every element of claim 1.

Applicant respectfully asserts that the combination of *Sirhan* and *Thompson* does not provide any valid reason for the teachings thereof to be changed from their current state in order to teach each and every element of the presently pending claims. Since neither *Sirhan* nor *Thompson* teach that it would be beneficial or desirable for the exterior surface of a stent to be roughened as recited in claim 1, the references themselves do not provide any valid reason to change the teachings thereof. Thus, there is no reason to change the teachings of the combination of *Sirhan* and *Thompson* in order to arrive at the presently claimed invention.

Additionally, Applicant respectfully asserts that the combination of *Sirhan* and *Thompson* teaches away from the presently claimed invention. Since *Sirhan* does not teach a specific surface to have the grooves and *Thompson* affirmatively teaches the external surface should be smooth and polished, the combination of *Sirhan* and *Thompson* affirmatively teaches away from "at least a portion of the exterior surface and the interior surface is roughened to a predetermined extent for coating with a drug, wherein the surfaces are roughened by sandblasting," as recited in claim 1.

Since *Sirhan* does not teach each and every element of the presently claimed invention recited in claim 1, the a *prima facie* case of obviousness has not been established with respect to

Application No. 10/528,352
Amendment "A" dated April 17, 2008
Reply to Office Action mailed October 15, 2007

RECEIVED
CENTRAL FAX CENTER

APR 17 2008

claim 1. Claims 2-3 depend from claim 1, and thereby includes the limitations thereof and are allowable for the same reasons claim 1 is allowable. Applicant respectfully requests withdrawal of the rejection of claims 2-3 under 35 U.S.C. § 103(a).

CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in any action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required valid reason to combine and/or change the references relied upon with the other art of record.

Applicant believes claims 1-6 and 21-33 are in allowable form as discussed above. As such, Applicant respectfully requests reconsideration of the application and allowance of presently pending claims. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney by telephone at (801) 533-9800.
Dated this 17th day of April, 2008.

Respectfully submitted,



KELLY J. MCCRYSTLE
Registration No. 46,257
In-House Counsel for Abbott Laboratories Vascular
Enterprises, Ltd.
Customer No. 057360

KJM: FDR: kdj
W:\10422\1311\KDJ0000002463V001.doc